

## REMARKS

The application has been reviewed in light of the Final Office Action mailed March 2, 2005. The Applicants respectfully request that the finality of the prior office action be withdrawn in light of the RCE filed herewith. At the time of the Final Office Action, claims 1-18 were pending in this application. Claims 1 and 10 have been amended. Claims 19-25 were previously withdrawn in response to a restriction requirement.

The Examiner rejected claims 1, 2, 4-11, 13-18 under 35 U.S.C. § 102(b) as being anticipated by Krueger (U.S. Patent 4,474,063) and objected to claims 3 and 12 as being dependent upon a rejected case claim, but indicated such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicants gratefully acknowledge the Examiner's indication of the allowability of claims 3 and 12. The Applicants, however, respectfully disagree with the Examiner's rejection of the remaining claims, and therefore transverse his rejection of these claims as set forth immediately below.

Krueger discloses a load cell disposed in the bottom of a storage tank that measures the weight of bulk material contained in the tank. The load cell has a flexible diaphragm. The weight of the bulk material is applied to the flexible diaphragm, which in turn moves downward away from a neutral no-load position under the weight of the bulk material applied to it. A source of fluid under pressure is connected to a cavity in the load cell on a side of the diaphragm opposite the side that senses the weight of the bulk material. Fluid pressure is supplied to the cavity in an amount that causes the diaphragm to move to its neutral position, balancing the load applied to the diaphragm from the bulk material. A pressure gauge coupled to the cavity senses the fluid pressure required to balance the load. The pressure gauge is calibrated

to read the height of the bulk material. Knowing the cross-sectional area of the tank and the density of the material, the weight of the bulk material can be calculated. In short, Krueger is directed to an apparatus and method for calculating the weight of a bulk material in a storage tank.

Krueger fails to teach or suggest, however, any mechanism or method for determining a corrected weight of a batching tank which deducts the weight of the fluid in the tank, and therefore fails to anticipate the present invention as defined in the amended claims. Turning specifically to the claims, Krueger fails to teach or suggest the step of “determining a corrected weight of the batching tank . . . wherein the corrected weight of the batching tank does not include the weight of the fluid in the tank,” as required by amended independent claims 1 and 10. Therefore, amended independent claims 1 and 10, and claims 2, 4-11 and 13-18 dependent therefrom, are believed patentable over Krueger. Accordingly, the Examiner’s rejection of these claims as being anticipated by Krueger should be withdrawn.

### **SUMMARY**

In light of the above amendments and remarks, Applicants respectfully submit that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile or electronic mail, as indicated below.

Applicants believe that there are no fees other than those associated with the filing of the RCE are due in this application. However, should the Commissioner deem that any additional fees to be due, including any fees for any extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition therefore, and directs that any fees be debited from Baker Botts L.L.P., Deposit Account No. 02-0383, (*formerly Baker & Botts, L.L.P.*) Order Number 063718.0379.

Respectfully submitted,

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